

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-459

June 27, 2000

TEL-SAVE INC., D/B/A THE PHONE CO.
OF NEW HOPE

ORDER

Complaint Requesting Commission
Action Regarding Bell Atlantic
Maine's Refusal to Accept E-Mailed
Requests to lift PIC Freezes, both
Directly from Customers and as
Forwarded by TSI

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. INTRODUCTION

In this Order, we dismiss the complaint of Tel-Save, Inc. (TSI) against Bell-Atlantic-Maine, Inc. (Bell) as without merit because Bell's current practices are not unreasonable.

II. BACKGROUND

This case involves a process called a "PIC freeze" which enables customers to prevent their local exchange carrier (LEC) from changing their interLATA or intraLATA toll service provider until the customer specifically authorizes the local carrier to unfreeze the account and make a change. Ordinarily, a LEC will accept the representation of a toll provider that a customer has authorized a change in toll service provider. Indeed, toll providers send data relating to switching service providers to the LEC on computer tapes and the LEC makes the changes without specifically checking with the customer. Unfortunately, this practice allows unscrupulous toll carriers to "slam" customers -- direct the LEC to switch a customer's service provider to the slammer without having obtained prior authorization from the customer. PIC freezes are used to avoid slamming by requiring the LEC to contact the customer to confirm that the customer has authorized a switch in toll providers before actually making the switch. Pursuant to Chapter 296, section 2 of our Rules, customers may request a PIC freeze by contacting their local exchange carrier.

On June 15, 1998, TSI, a certificated toll provider, filed a complaint pursuant to 35-A M.R.S.A. § 1302(3) alleging that Bell's policy of not recognizing electronic mail (e-mail) as a directive to lift a PIC freeze unreasonably delays or impedes a subscriber's desired change in toll carrier and may nullify a subscriber's choice if the subscriber is unable, or unwilling, to take additional affirmative steps to contact Bell directly. TSI argues that this refusal to recognize e-mail requests to lift PIC freezes is an unjust and unreasonable service condition in violation of 35-A M.R.S.A. §§ 301 and 702. In

addition, TSI alleges that by refusing to honor e-mail requests to lift a PIC freeze, Bell is attempting to preclude competition and protect its own market share for intraLATA services and, thus, engages in a discriminatory practice in violation of 35-A M.R.S.A. § 702.

On June 16, 1998, the Commission directed Bell to respond to the complaint and on June 26, 1998, Bell filed its Response. Bell acknowledged that if a customer had requested a PIC freeze, Bell would not process any carrier's instructions to change the subscriber's presubscribed interLATA or intraLATA carrier without a "further explicit authorization directly from the subscriber." Consistent with that policy, Bell refused to accept e-mail messages (from either the new carrier or the customer) as a means of lifting a PIC freeze. Bell suggested that if it were to accept e-mail directives to remove PIC freezes, many of the abuses which underlie the need for a PIC freeze would resurface. In particular, Bell argued that e-mail directives would deprive it of the ability to verify or authenticate the subscriber's real intentions while allowing an unscrupulous carrier to generate and submit numerous such directives with little expense or effort.

Procedurally, Bell suggested that this Commission defer any consideration and decision until the Federal Communications Commission (FCC) had completed its review of its rules governing selection of a "Preferred Carrier." The FCC completed the review in December 1998 and issued rules which did not allow for lifting PIC freezes by e-mail. See In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, CC Dckt. 94-129, Second Report and Order and Further Notice of Prop. Rulemaking, (Dec. 23, 1998). However, the FCC received several petitions for reconsideration, and on May 3, 2000, it issued its First Order on Reconsideration in which it modified several provisions of its current rules. See In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, CC Dckt. 94-129, First Order on Reconsideration (May 3, 2000). None of the modifications, however, dealt with the issue of whether customers could lift a PIC freeze through e-mail.

III. DISCUSSION

We completed our own rulemaking on the issue of slamming in September of 1999. Rulemaking on Selection of Primary Interexchange and Local Exchange Telephone Carriers, Docket No. 98-725 (Sept. 7, 1999). Chapter 296 § 2(B) of our Rule addresses verification of customer requests to change carriers on accounts which are subject to a PIC freeze. The rule does not specifically provide for e-mail verification but would allow such a practice if the FCC approves it. As stated above, however, current federal law does not provide for lifting of PIC freezes through e-mail.

E-mail verification was not specifically included in our slamming rule because it is unclear whether this method is reliable. Bell has argued that e-mail may not be reliable, in part because it is difficult (if not impossible) to verify that the e-mail actually originated from the customer. TSI has argued that an e-mail request (with proper authentication

and verification information) is as reliable as the oral requests or confirmations now accepted by Bell.

It is well-known that an e-mail address may not correspond with a person's legal name -- it may only contain the person's initials or may be a fictitious name. Further, e-mail is offered through a variety of sources and vendors and thus there is no one definitive list or directory with which to verify or cross-reference e-mail names with real names. Given the lengths to which slammers have gone to create fraudulent requests to switch carriers and the lack of security of e-mail and the Internet generally, it appears likely that slammers could use e-mail as another method of perpetuating their fraud.

Given the potential for abuses with e-mailed PIC freeze lifts and the fact that Bell's current practices are consistent with both Chapter 296 of our Rules as well as the FCC's rules (neither of which allows for lifting a PIC freeze by e-mail), we cannot find that Bell's practices are unreasonable. Accordingly, we dismiss TSI's complaint. The parties are encouraged to bring any developments at the FCC relating to this issue to our attention.

Dated at Augusta, Maine, this 27th day of June, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

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